



FACT SHEET ON DISQUALIFICATION FROM MUNICIPAL DECISIONS PART 4: SOURCES OF GIFTS

The City's Ethics Ordinance includes laws that prohibit City Officials from influencing municipal decisions when it is reasonably foreseeable that those decisions will have a material financial effect on their economic interests. This fact sheet is one of a series of fact sheets designed to offer general conflict of interest guidance to City Officials who participate in making municipal decisions. This particular fact sheet is focused on conflicts involving sources of gifts. Keep in mind that the information offered in this fact sheet should not be considered a substitute for the actual language contained in local and state law.

GENERAL RULES

- ❖ The Ethics Ordinance prohibits City Officials from participating in a municipal decision if it is reasonably foreseeable (i.e., a realistic possibility) that the decision will have a “material financial effect” on any person or entity that has given the official gifts totaling \$460 or more within the past twelve months.
- ❖ Note that the dollar threshold is subject to change on January 1 of every odd-numbered year. For this reason, the \$460 threshold may increase on January 1, 2017.
- ❖ Under these rules, for example, a City Official who accepts \$460 worth of San Diego Padres tickets over the previous twelve months from a particular company would likely be precluded from participating in a municipal decision involving that company.
- ❖ For a detailed discussion regarding what does, and does not, constitute a “gift,” please refer to the Ethics Commission’s “Fact Sheet on Gifts to City Officials,” which is available on the Commission’s website.
- ❖ Note that there is no exception for gifts from a governmental agency or charitable organization. If the County of San Diego, another city, or even an entity owned by the City such as the Convention Center Corporation, gives you gifts that equal or exceed \$460, you may be legally precluded from participating in municipal decisions involving that entity.
- ❖ Although the Ethics Ordinance imposes a limit on gifts received within a calendar year, keep in mind that the disqualification rules are based on any twelve month period, not a calendar year. For this reason, you could accept \$500 in gifts from the same person over a twelve month period without violating the gift limit if the gifts were appropriately spread out over two calendar years, but you might still be disqualified from participating in a municipal decision involving the donor.
- ❖ Some gifts are not subject to gift limits (e.g., when a 501(c)(3) non-profit entity pays your travel expenses for a governmental purpose), but may still subject you to disqualification. In other words, if a 501(c)(3) organization pays \$1,000 for airfare and lodging for you to attend a work-related conference in Sacramento, you would not exceed the gift limit, but you would be precluded from participating in decisions involving that entity for twelve months following the payment.

- ❖ Whether the financial effect of a municipal decision on a source of a gift is “material” depends on the applicable facts. As a general rule, however, the financial effect will be “material” if the source of the gift is the subject of the decision or will be financially affected by the decision, as discussed below.

MATERIALITY

- ❖ The financial effect of a municipal decision on a source of a gift is “material” if:
 - ✓ the source is a claimant, applicant, respondent, contracting party, or is otherwise named or identified as the subject of the proceeding; or,
 - ✓ the source is an individual who will receive a measureable financial benefit or loss from the decision or who has an interest in a business entity or real property that the official has reason to know will be financially affected by the decision (see disqualification fact sheets concerning business interests and real property for guidance); or,
 - ✓ the source is a non-profit entity that will receive a measurable financial benefit or loss from the decision or that has an interest in real property that the official has reason to know will be financially affected by the decision (see disqualification fact sheet concerning real property for guidance); or,
 - ✓ the source is a for profit business entity that will be financially affected by the decision (see disqualification facts sheet concerning business interests for guidance).
- ❖ For example, Gary is a Deputy Director in Development Services who accepted Chargers and Padre tickets over the past twelve months valued at \$550 from Sam, the owner of a Gaslamp restaurant seeking to change the permitted use of the premises. By accepting the tickets, Gary is disqualified from participating in any municipal decisions that will financially affect Sam (or if he has reason to know, will financially affect any of Sam’s businesses or properties).
- ❖ For example, Gary is a Deputy Director in Development Services who accepted Chargers and Padre tickets over the past twelve months valued at \$550 from Sam, the owner of a Gaslamp restaurant seeking to change the permitted use of the premises. By accepting the tickets, Gary is disqualified from participating in any municipal decisions that will financially affect Sam (or any of Sam’s businesses or properties that Gary has reason to know will be affected).

INSIGNIFICANT FINANCIAL EFFECT

- ❖ Notwithstanding the rules set forth above, there are circumstances in which a municipal decision’s financial effect is so minor that it does not rise to the level of being “material.” In other words, a City Official does not have a disqualifying conflict of interest in a municipal decision if the financial effect of the decision is nominal or inconsequential.
- ❖ For example, Tina is a member of the Commission for Arts and Culture. She also does volunteer work for an arts organization that receives tickets to cultural events and hands them out to its volunteers. Tina has received more than \$500 worth of these tickets over the past 12 months. Tina’s commission will be considering a request from the arts organization to display student artwork on City property. Because the arts organization will not derive any financial benefit from the display of the student artwork, Tina is not prohibited from participating in the decision.

PUBLIC GENERALLY

- ❖ Even if the financial effect of a municipal decision on the donor of a gift is material, you will not be disqualified from participating in that decision if you can establish that the financial effect on the donor is indistinguishable from the financial effect on the public generally.
- ❖ A decision affecting the donor of a gift is entitled to the “public generally” exception if the financial impact on the donor is essentially the same as it is on at least 25% of all individuals, business entities, or non-profit organizations (whichever category the donor falls into) located in the City of San Diego.
- ❖ When determining whether a municipal decision’s financial impact on a particular donor is disproportionate to its impact on other individuals or entities in the City, consider the donor’s income, investments, assets or liabilities, or real property.
- ❖ In addition, the “public generally” exception will likely apply in the following special circumstances: (1) the imposition of taxes or assessments for water, utility, or other broadly provided public services applied equally or proportionally to everyone; (2) changes to parking rates, permits, and fees that apply to the entire City; (3) ordinances that restrict on-street parking, impose traffic controls, deter vagrancy, reduce nuisance, or improve public safety; (4) decisions that affect all renters of residential property; (5) situations in which the law requires a board or commission to contain appointees representing a particular trade or profession and there is no unique effect on the appointee; and (6) states of emergency. Contact the Ethics Commission for assistance with these circumstances.

CONTRACTS

- ❖ If the municipal decision involves a contract, be sure you also review the Ethics Commission’s “Fact Sheet on Financial Interests in a Contract.”

Determining whether or not you have a conflict of interest in a particular municipal decision can be a complicated matter. Do not hesitate to contact the Ethics Commission at (619) 533-3476 for additional assistance.

Rev. 5/8/15